

DECISION



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**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-211535

DATE: May '26, 1983

MATTER OF: B.K. Instrument, Inc.

DIGEST:

Dismissal with prejudice of a complaint filed in court constitutes a final adjudication on the merits, barring further action by the General Accounting Office on a protest involving the same issue.

B.K. Instrument, Inc. protests the award of a contract to American Kal Enterprises, Inc., for electronic tool kits under solicitation No. DAAB07-83-B-B026, a small business set-aside issued by the Department of the Army. B.K. maintains that the contracting officer improperly rejected the firm's bid as nonresponsive.

After filing its protest, B.K. filed suit on the same matter in United States District Court requesting declaratory and injunctive relief. The court dismissed the action with prejudice, and B.K. has appealed the dismissal to the court of appeals.

The dismissal with prejudice constitutes a final adjudication on the merits of the matter barring further action by this Office. Technicolor Government Services, Inc., B-208721, December 23, 1982, 82-2 CPD 570; see 4 C.F.R. § 21.10 (1983). The protest therefore is dismissed.

for *J. B. Barclay, Jr.*
Harry R. Van Cleve
Acting General Counsel

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